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Pawnbrokers and Moneylenders: A Pawnbroker Cannot Qualify as a Holder in Due Course of Negotiable Stolen Bonds Where Statute Requires Pawnbroker to Publicize Loans and Account to Owners of Stolen Goods

Daniel C. Shea

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the present time, influenced the supreme court to "liberalize" its classification of those acts falling within the proprietary capacity of municipalities; as is evidenced by the court's holding in two recent cases above mentioned. See *Virovatz v. City of Cudahy*, and *Erickson v. West Salem*, *supra*.

JOHN H. RUSSELL.

PAWNBROKERS AND MONEYLENDERS—A PAWNBROKER CANNOT QUALIFY AS A HOLDER IN DUE COURSE OF NEGOTIABLE STOLEN BONDS WHERE STATUTE REQUIRES PAWNBROKER TO PUBLICIZE LOANS AND ACCOUNT TO OWNERS OF STOLEN GOODS.—The plaintiff was a pawnbroker. It was an Illinois corporation. Two negotiable bonds were pledged with it by a pawnor to secure a loan of \$600. The bonds on their face were worth \$2000. The bonds had been obtained fraudulently by someone from the claimant in the present case. No one in the pawnbroker's employ knew of that fact. The third party claimant had notified the office of the state's attorney that the bonds had been obtained from her. The pawnbroker made its daily report to the police officials as required by the local regulatory statutes. The pawnbroker listed the bonds. The state's attorney detected the missing bonds and demanded that the pawnbroker turn the bonds over to his office. The pawnbroker complied, but thereafter demanded a return of the bonds, claiming to have been a holder in due course. When the bonds were not returned the pawnbroker sued the state's attorney for conversion. The defendant interpleaded the third party claimant. After a trial by the court the trial court found judgment for the third party. On appeal, *held*, judgment affirmed. The plaintiff was affected by the pawnbroker's statute notwithstanding its status in other respects as a holder in due course of negotiable paper. *Swesnik Loan Co., Inc. v. Courtney*, (Ill. App. 1937) 10 N.E. (2d) 512.

Whether the plaintiff had given value to the pledgor of the bonds without reason to suspect any defect on the pledgor's claim was not material in the opinion of the appellate court. The plaintiff had accepted the goods in pawn. The company had complied with the statute in making its reports. And the statute is intended to aid in the recovery of stolen goods. It has been held that a pawnbroker who can qualify as a holder in due course is protected against the previous holders of negotiable paper notwithstanding the fact that he has taken them in pawn. *American Railway Express Co. v. Gallant Loan and Mercantile Co.*, (Mo. App. 1924) 259 S.W. 828; *American Railway Express Co. v. Frieman Loan & Mercantile Co.*, (Mo. App. 1924) 260 S.W. 1008. It is to be noted, however, that in these cases there was apparently no pawnbrokers' statute effective in the jurisdiction where cases were decided. Certainly the courts did not call attention to any regulatory statutes or ordinances. Courts as well as legislatures may choose to hold pawnbrokers to a high standard of care in their business. The doctrine of apparent authority will not be available to the pawnbroker who lends to one with "authority" only to sell or to display. *Silberfeld v. Solomon*, 70 Colo. 413, 202 Pac. 113 (1920); *Levi v. Booth*, 58 Md. 305, 42 Am. Rep. (1882). The New York court, however, has chosen to extend the protection of the "Factors' Act" to pawnbrokers. *Nelkin v. Providence Loan Society of New York*, 265 N.Y. 393, 193 N.E. 245 (1934).